

SERVED: February 11, 1992

NTSB Order No. EA-3495

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 29th day of January, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

v.

SE-8879

DENNIS VINCENT PULLARO,

Respondent.

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge Patrick G. Geraghty issued in this proceeding on August 24, 1988, at the conclusion of an evidentiary hearing.¹ By that decision the law judge affirmed an order of the Administrator suspending respondent's airline transport pilot certificate for thirty days on allegations that

¹An excerpt from the hearing transcript containing the "Decisional Order" and, appended to it, those pages preceding it containing the law judge's review and assessment of the parties' evidence is attached.

he violated sections 91.65(a), 91.67(a), and 91.9 of the Federal Aviation Regulations ("FAR"), 14 C.F.R. Part 91,² by taking off, as pilot in command of America West Airlines Flight 560, on Runway 20 at Durango Airport while another aircraft was on final approach for landing on Runway 02, forcing the other aircraft off the runway in order to avoid a collision. For the reasons that follow, we will deny respondent's appeal and affirm the law judge's decision.

Respondent's sole contention on appeal³ is that the law judge's credibility determination in favor of the Administrator's witnesses was erroneous, requiring reversal of the initial

²FAR §§ 91.65(a), 91.67(a), and 91.9 provide as follows:

"§ 91.65 Operating near other aircraft.

(a) No person may operate an aircraft so close to another aircraft as to create a collision hazard.

§ 91.67 Right-of-way rules; except water operations.

(a) General. When weather conditions permit, regardless of whether an operation is conducted under Instrument Flight Rules or Visual Flight Rules, vigilance shall be maintained by each person operating an aircraft so as to see and avoid other aircraft in compliance with this section. When a rule of this section gives another aircraft the right of way, he shall give way to that aircraft and may not pass over, under, or ahead of it, unless well clear.

§91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

³The Administrator has filed a brief in reply.

decision.⁴ Board precedent is clear that a credibility determination is generally within the exclusive province of the law judge and will not be disturbed in the absence of arbitrariness, capriciousness or other compelling reasons. Administrator v. Smith, NTSB Order No. EA-2438 at 8 (1987); Administrator v. Coleman, 1 NTSB 229, 230-231 (1968). This standard of review does not mean that the Board will blindly affirm all credibility determinations by the administrative law judges. Rather, the Board will reverse the law judge's findings when a witness' testimony is "inherently incredible." See Chirino v. NTSB, 849 F.2d 1525, 1530 (D.C. Cir. 1988); Administrator v. Powell, NTSB Order No. EA-1919 (1983). Upon reviewing the record under the above stated standard, we believe that the law judge's decision should be sustained.

In view of the foregoing, we find that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's order and the law judge's oral initial decision.

⁴The parties' respective witnesses provided contradictory testimony as to whether the pilots had communicated their operational intentions on the airport unicom frequency.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The Administrator's order and the law judge's decision are affirmed; and
3. The 30 day suspension of respondent's airline transport pilot certificate shall commence 30 days after service of this opinion and order.⁵

KOLSTAD, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁵For purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR §61.19(f).